

**United States Senate**  
**WASHINGTON, DC 20510**

December 2, 2004

The Honorable Colin Powell  
Secretary of State  
2201 C Street NW  
Washington, DC 20520

The Honorable John W. Snow  
Secretary of the Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

Dear Secretary Powell and Secretary Snow:

We understand that Administration officials will meet soon to consider making a change or "clarification" to the regulations concerning payment for Cuban purchases of US agricultural products that could significantly impede such sales.

The proposed change would clarify that the phrase in the Trade Sanctions Reform and Export Enhancement Act of 2000 which requires that the terms of sale be "payment of cash in advance" requires that payment be made in advance of shipment.

That interpretation would be significantly more restrictive than the current practice -- which U.S. agencies have permitted for three years -- that payment must be received by the U.S. shippers before the Cuban buyer can take possession of the goods. Yet some Administration officials apparently contend this was, or might have been, the intent of Congress.

We want to make sure this point is absolutely clear: Congress obviously would not put language that would impede trade into a bill intended to facilitate trade.

Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 for the express purpose of facilitating U.S. agricultural and medical sales to Cuba and several other nations. Thus you should assume that the phrase "payment of cash in advance" should be interpreted broadly in a way that provides maximum flexibility to exporters, not narrowly in a way that would limit exporters' options. In particular, there is no justification for asserting that the law requires cash in advance of shipment.

The law stipulates that sales must be for payment of cash in advance because Congress wants to ensure that Cuba does not get any type of U.S. credit or financing. Whether the U.S. seller requires the Cuban buyer to pay for the goods before they are shipped toward Cuba or to pay before the Cuban buyer takes delivery in Cuba does not matter.

If the Office of Foreign Assets Control knows that some U.S. person has intentionally abused the "cash against documents" system currently used, then OFAC should take action against the people involved. If OFAC believes there have been unintentional cases of abuse, then OFAC should meet with Congressional staff and industry to discuss the problem and see if new procedures are needed.

There is no need for the proposed tightening or clarification of OFAC's regulations and policies regarding agricultural trade with Cuba so long as sellers and buyers comply with the regulations in place, which are guided by legislation supported by majorities in both chambers in Congress.


Sincerely,



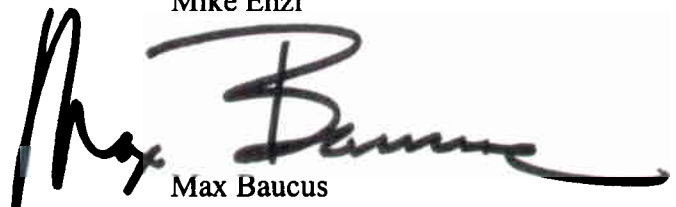
Byron L. Dorgan



Mike Enzi



Christopher Dodd



Max Baucus



Arlen Specter

cc.: Al Larson, Under Secretary of State  
Stuart Levey, Under Secretary of Treasury  
JB Penn, Under Secretary of Agriculture